

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard. From the testimony, exhibits and
3 contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Green Bluff is a plateau lying in a rural district north of the
7 City of Spokane. The plateau juts westerly from the foot of
8 Mt. Spokane, arising abruptly 300 to 400 feet above the surrounding
9 valley floor. From the south it is cleft by a steep gully. At the
10 gully's upper end, in the center of the plateau, is a small community
11 center, featuring a fire station, a Grange hall and a store. The
12 plateau has long been used for the growing of tree fruit, berries and
13 vegetables. It is the site of numerous small farms and residential
14 properties which are supplied with domestic and irrigation water from
15 wells.

16 II

17 The groundwater appropriation in question was applied for by
18 respondent Stanley Edburg on November 17, 1984 (Application
19 #G3-27889). He seeks to irrigate a total of 29 acres in the heart of
20 the plateau, immediately to the east and southeast of the community
21 store.

22 III

23 Adjacent to the southeast corner of Edburg's parcel is the
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1 property of appellant Zelnor Keck. Mr. Keck, now 80 years of age, has
2 lived in the Green Bluff area most of his life. Over the years he has
3 farmed numerous properties on the plateau. He has occupied his
4 present home since 1945. He now has six acres in orchard and three in
5 pasture.

6 IV

7 Edburg has been irrigating a portion of his acreage for some
8 time. He has two wells which provide irrigation and domestic water.
9 The most southerly of these wells (Edburg #1), the oldest and closest
10 to Keck's well, is the subject of a water right certificate
11 (G3-24604C) which evidences the appropriation of water at a maximum
12 rate of 12 gpm, limited to 2.5 acre feet for the seasonal irrigation 8
13 acres and 1 acre foot for continuous domestic supply (Edburg's
14 house). This appropriation has been used to its full extent for a
15 dozen years without any suggestion of interference with other wells.

16 In 1982, Edburg drilled another well (Edburg #2), about 600 feet
17 north and slightly west of his first well. Since that time this well
18 has been used to supplement irrigation on the 8 acres covered by the
19 first well and to irrigate 5 additional acres planted in
20 strawberries. It also supplies domestic water to a tenant's home.
21 Edburg #2 initially yielded water at 20 gallons per minute, but the
22 yield subsequently fell off when the sand screen plugged. Recently
23 when the screen was backflushed the 20 gpm yield returned.

V

The instant permit approval would tie the two Edburg wells together in a system which allows in total for a withdrawal rate of 27 gallons per minute, limited to 23 acre feet per year with 20 acre feet being used seasonally to irrigate 29 acres and three acre feet used continuously for domestic supply. It would supplement the existing certificate for Edburg #1.

The net effect would be authorization for 15 gpm from Edburg #2 and the addition of 16 new acres in irrigation.

VI

Ecology has identified both deep and shallow aquifer systems underlying Green Bluff. Most of the existing wells, including Edburg's penetrate only the shallow aquifer, from 80 to 100 feet below the surface of the plateau.

Ecology has monitored the behavior of this aquifer and has observed that it is drawn down during the irrigation season but generally recovers during the winter. In the last several years of drought conditions, the agency believes that recovery has been incomplete and that the delayed reaction of this regional phenomenon was felt late last summer when several well owners, including Mr. Keck, for the first time experienced short term declines below their pump intakes.

VII

For a number of years Ecology's inspectors have been watching wells in the Green Bluff area for signs of well-interference caused by pumping. One incident thought to be traceable to such interference was noted on the north end of the plateau in 1981 and another on the west side in 1988. But aside from these two isolated occurrences, there has been no evidence of a general well-interference problem on the plateau. Nothing of the sort has come to the agency's attention in the sector where Edburg's wells are located.

Indeed, in the years since Edburg #2 was placed into operation, no effects have been registered on the well of his nearest neighbor which is only 30 to 40 yards away. This includes last summer. And the lack of interference between these wells is noteworthy because they are of closely similar depth, they penetrate similar strata, and they are almost certainly drawing from the same underground water body. Moreover, no negative effects have been detected in Edburg #1, when Edburg #2 has been pumping.

VIII

Ecology's examiner, a person of considerable practical experience, concluded that Edburg's application could be approved in the amounts set forth (less than initially requested) largely on the basis of judgment formed from observations over time in the Green Bluff area and from broader observations of effects of the recent drought.

1 The agency attempted in connection with this application to
2 determine aquifer characteristics through a 24-hour pump test.

3 Even though the results were generally favorable to the
4 applicant, difficulties encountered caused the examiner to disregard
5 the pump test in reaching his conclusions.

6 IX

7 Zelnor Keck is concerned that Ecology has not done a sufficient
8 investigation to understand the effects of allowing more pumping on
9 the shallow aquifer. He notes that the agency does not know the shape
10 of the aquifer, has no clear idea of its capacity, has made no
11 systematic survey of static water levels in wells.

12 The water in the area's wells is under pressure, leading Mr. Keck
13 to believe that the source of water for the aquifer is from off the
14 plateau, and not limited to precipitation on overlying lands. This
15 hypothesis causes him to discount the effects of the recent dry years
16 on water levels in the aquifer.

17 Keck does not assert that Edburg's operations alone have directly
18 harmed his well or are likely to. But, he is worried that Edburg's
19 permit approval exemplifies a trend of allowing development which in
20 the aggregate either exceeds normal recharge or threatens to do so.
21 He thinks that the general availability of water from the shallow
22 aquifer is declining and points to a number of springs which used to
23 flow from the walls of the plateau and now have dried up.

1 X

2 Keck's concerns do not amount to proof of the suppositions he
3 advances. However, they are based on thoughtful reflection, after a
4 lifetime of paying attention to conditions in the neighborhood. His
5 conclusions are all within the realm of possibility.

6 XI

7 Any Conclusion of Law which is deemed a Finding of Fact is hereby
8 adopted as such.

9 From these Findings of Fact, the Board makes these

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over these parties and these matters,
13 Chapters 43.21B, 90.44, and 90.03 RCW.

14 II

15 The proposed withdrawal will not be beyond the capacity of the
16 aquifer to yield water within a reasonable or feasible pumping lift.
17 RCW 90.44.070.

18 III

19 Through RCW 90.44.060, the groundwater code incorporates
20 RCW 90.03.270 which requires that four criteria be met in granting an
21 appropriation permit: 1) water is available; 2) the use is
22 beneficial; 3) existing rights will not be impaired; 4) the
23 appropriation will not be detrimental to the public welfare.
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

PCHE NO. 88-148

(7)

1 Stempel v. Department of Water Resources, 82 Wn.2d 109, 508 P.2d 166
2 (1973). The instant appeal raises questions involving the latter two
3 of these.

4 IV

5 On the record, we conclude that exisiting rights will likely not
6 be impaired by the approval at issue. The approval involves, in
7 substantial part, an existing operation which has proceeded for a
8 number of years without apparent direct negative effects. We were not
9 convinced that the expansion contemplated would change this.

10 V

11 On the record, we conclude that the appropriation does not, in
12 itself, pose a threat to the public welfare. We were not convinced
13 that this development will result in the overdraft of the aquifer to
14 the point that prior water users will be unable to obtain water at
15 reasonable depths. See RCW 90.44.130.

16 VI

17 Originally, there were five other appellants, in this matter in
18 addition to Zelnor Keck. The other appellants were dismissed upon
19 agreeing to withdraw, on the condition that Ecology include the
20 following in Edburg's permit:

21 Should the withdrawal of water authorized by this
22 permit detrimentally affect any prior rights to the use
23 of water held by Mr. and Mrs. Merton Robbins, Clayton
24 Wellington, T.L. Brownlee, Lucille Brownlee, Vera A.
25 Siemers or Zelnor Keck, the withdrawal will be
regulated by the State of Washington, Department of
Ecology, in accordance with Chapter 90.44 RCW and
Chapter 90.03 RCW.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 While this language may provide some comfort, it requires no more of
2 the Department that the law demands without it.

3 We understand Mr. Keck's concern that a regulatory response may
4 come too late to do any immediate good in a situation where regional
5 overdraft (not direct well-interference) is the problem. We agree
6 with him that the Department should learn more about the size and
7 behavior of the resource before it permits any substantial increase in
8 irrigation withdrawals from the shallow aquifer below Green Bluff.

9 The option of requiring irrigation developers to drill into the
10 deep aquifer, while casing out the shallow one, is available to the
11 Department in the future, if as a matter of policy it appears that the
12 shallow aquifer should be reserved for domestic users. See Chapter
13 173-154 WAC.

14 VII

15 Any Conclusion of Law deemed a Finding of Fact is hereby adopted
16 as such.

17 From these Conclusions of Law, the Board enters this:
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

PCHB NO. 88-148

ORDER

The Department of Ecology's Report of Examination and Order authorizing a permit to appropriate under Application #G3-27889 (Stanley Edburg) is affirmed.

DONE this 30th day of June, 1989.

POLLUTION CONTROL HEARINGS BOARD

Wick Dufford
WICK DUFFORD, Presiding

Judith A. Bendor
JUDITH A. BENDOR, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

PCHB NO. 88-148

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